IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1058 OF 1991.

The Union of India : Appellant.

versus

M/s.Bhivraj Kanmal : Respondent.

Mr.A.N.Samant for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondent. Heard Mr.Samant for the appellant. Nobody is present for the respondent, though served.

2. Mr.Samant, the learned counsel for the appellants, has raised only two contentions. Firstly, according to him, the claim was filed by the original claimant against two railways i.e. General Manager, Central Railway, Bombay and

General Manager, South Eastern Railway, Calcutta and the tribunal passed an award against both the railways. Therefore, according to Mr.Samant there can be liability only of one railway and not of both the railways.

3. Secondly, he contended that the Railway Receipt was issued by the Railway as "Said to Contain" basis.

4. Out of the two submissions made by Mr.Samant, I find some force in the first submission. If at all there is liability of the Union of India, then decree against one of the railways would be proper and sufficient. In many such appeals of the Union of India I have accepted this contention. Therefore, the impugned judgment will have to be maintained against General Manager, Central Railway only and order against other railways has to be set aside.

5. So far as the contention of Mr.Samant regarding RR with the endorsement "Said to Contain" is concerned, the same is required to be rejected. In this case, the claimant had entrusted a consignment of 361 packets of onions,

booked under R.R.No.108938, Invoice No.169 dated 26th February 1975 for carriage Ex-Nandgaon to Shalimar. When the goods reached at the destination all the packets were found damaged and the damages were assessed at various percentages. The goods were to reach destination within a normal period of 8-9 days. The claimants contended that the respondents/railway had not taken proper and reasonable care of the consignment as carriers. As a result the suit goods were damaged due to delay and, therefore, claim petition came to be filed.

. The Tribunal framed as many as 16 Issues but the Issue regarding RR "Said to contain" was not at all framed. The tribunal found that there was total negligence and inordinate delay in delivery of consignment by the railways. So far as compensation is concerned, the railways had issued damaged certificate, Exhibit R2 and A3. It appears from the damage certificate that the assessment delivery of the consignment was given at the destination station and it was found on assessment that 81 bags were in good condition and remaining 280 bags wee in damaged condition. The tribunal held that the claimant has proved

that the consignment reached destination in damaged condition and, therefore, he is entitled for the damages.

6. Railways can file defence of said to contain when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of actual damage certificate and if the actual damage suffered can be ascertained on the basis of the evidence on record, then question as to how much quantity was entrusted to the railways becomes secondary. The damage certificate shows that railways were in a position to make assessment of the damages in respect of the bags, number of bags actually damaged under the invoice. The tribunal has accepted that the weight of the each bag was 40 kgs. as per the evidence of the claimant. In the circumstances, the defence of said to contain is not available to the appellants.

7. So far as interest part is concerned, the tribunal has awarded interest at the rate of 6% per annum from the date of suit till realisation

of the amount. Therefore, Mr.Samant does not press the point of interest because it is less. Lastly Mr.Samant for the appellant states that the appellant has deposited the amount. In the result, I pass the following order:-

:ORDER:

. The Appeal is partly allowed.

. The liability of payment will be of the General Manager, Central Railway only and not of the other railways.

. The principal amount awarded will carry interest at the rate awarded by the tribunal from the date of application up to the date of withdrawal by the claimant of the amount deposited by the railways pursuant to the order of this court or up to the date of investment with proportionate costs of the tribunal.

. so far as this appeal is concerned, no order as to costs.

[D.G.DESHPANDE]